

Index Number: 2041.01-00, 2601.00-00,
2601.04-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-152657-06

Date:
November 07, 2007

In Re:

Legend

Donor	=
Spouse	=
Child	=
Grandchild	=
Trust 1	=

Trust 2	=
X	=
Judicial Decree	=

Trustee =

Court	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Year 1	=
Year 2	=
Year 3	=

Year 4	=
Year 5	=
Year 6	=
Year 7	=
State	=
State Statute 1	=
State Statute 2	=
State Statute 3	=
State Statute 4	=
State Statute 5	=
Citation 1	=

Dear :

This is in response to a letter dated October 26, 2007, and prior correspondence from your authorized representative, requesting a ruling on the generation-skipping transfer tax consequences of the proposed exercise of Grandchild's power of appointment in Trust 2.

Facts

On Date 1, Donor created a revocable inter vivos trust, Trust 1, for the benefit of Spouse and Child. Trustee, a bank, was the trustee of Trust 1. Trust 1 was amended in Years 1, 2, 3 and 4. Trust 1 was judicially reformed on Date 2, in Year 5. Pursuant to the Judicial Decree, Trust 2 was established for the benefit of Child and her descendants. Donor died on Date 3. Trust 2 became irrevocable on Date 2. Date 2 is prior to October 21, 1942, and September 25, 1985. Trustee is the trustee of Trust 2.

Under Paragraph First, Trustee of Trust 2 is instructed to pay \$X annually to Child during her lifetime, and to pay the remainder of the income to Donor's Spouse during her lifetime. Upon the death of Spouse, all income is to be paid to Child for life. Upon the death of Child, leaving a child or children or descendants of any child surviving Child, all of the income is to be paid to the child or children for and during their natural life or lives, but not after the expiration of 21 years from the death of Grandchild. In the event that Grandchild is Child's only surviving child, then upon the death of Grandchild, Trust 2 is to be paid over, surrendered and delivered as Grandchild may have by her last will admitted to probate directed and appointed, or if there is no will, to the personal representative of Grandchild to be disposed of and distributed as the intestacy laws of the Grandchild's domicile prescribe.

Spouse died on Date 5. Child died on Date 6. Grandchild is Child's only surviving child, leaving Grandchild as the sole income beneficiary of Trust 2. On Date 4, Year 7,

a date prior to November 1, 1951, Grandchild, age 19, signed a Partial Renunciation and Release of her power of appointment over Trust 2. In the instrument, Grandchild released, renounced, and relinquished completely and irrevocably all power in her to appoint by will created by Trust 2, saving and excepting only the power in her to appoint by will to and among the donees described in § 811(f)(2)(A) of the Internal Revenue Code of 1939, as amended by § 403(a) of the Revenue Act of 1942. Pursuant to this instrument, Grandchild released, renounced, and relinquished the power to appoint to herself, her creditors, her estate, or the creditors of her estate.

Currently, Grandchild proposes to exercise her testamentary power of appointment in favor of her issue per stirpes. It is represented that no additions have been made to Trust 2 since Year 5, a date prior to September 25, 1985. It is represented that there have been no modifications or reformation made to Trust 2 since Year 5, a date prior to September 25, 1985.

You have requested the following rulings:

1. Grandchild's power to appoint Trust 2 assets which does not extend to appointing assets to herself, her creditors, her estate, or the creditors of her estate is not a general power of appointment.
2. Grandchild's exercise of her limited power of appointment in favor of her issue per stirpes will not be deemed a constructive addition to Trust 2 for generation-skipping transfer tax purposes.

ISSUE 1

Section 2041(a)(1) provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which a general power of appointment created on or before October 21, 1942, is exercised by the decedent either by will, or by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive; but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof. If a general power of appointment created on or before October 21, 1942, has been partially released so that it is no longer a general power of appointment, the exercise of such power shall not be deemed to be the exercise of a general power of appointment if such partial release occurred before November 1, 1951. Section 2041(b)(1) provides that the term "general power of appointment" means a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate.

Section 20.2041-1(c)(1) of the Estate Tax Regulations provides that a power of appointment is not a general power if by its terms it is either (a) exercisable only in favor of one or more designated persons or classes other than the decedent or his creditors, or the decedent's estate or the creditors of his estate, or (b) expressly not exercisable in

favor of the decedent or his creditors, or the decedent's estate or the creditors of his estate.

Section 20.2041-2(e) provides that it is assumed that all general powers of appointment are releasable, unless the local law on the subject is to the contrary, and it is presumed that the method employed to release the power is effective, unless it is not in accordance with the local law relating specifically to releases or, in the absence of such local law, is not in accordance with the local law relating to similar transactions.

The laws of State govern the provisions of Trust 2. In Year 6, State enacted State Statutes 1-5 governing the release of powers of appointment in State. State Statute 1 provides that "a person to whom any legal or equitable power of appointment, whether coupled with an interest or not, is given, may, by deed, release, or covenant or contract not to exercise, the power."

State Statute 2 provides that such person may release such power with respect either to the whole, or to any part, of the property subject thereto; in such manner as to reduce the number of, or to limit, the persons or objects, or classes of persons or objects, to whom or for whose benefit an appointment otherwise might be made thereunder.

State Statute 3 provides that such person may covenant or contract not to exercise such power with respect to a part only of the property subject thereto; in favor of any persons or objects, or classes of persons or objects, to whom or for whose benefit an appointment otherwise might be made, other than a reduced or limited number of persons or objects, or classes of persons or objects.

State Statute 4 provides that State Statutes 1-3 shall apply to powers of appointment created by instruments coming into operation either before or after these statutes take effect; provided, that it shall not apply where such instrument expressly prohibits a release of, or covenant, or contract not to exercise, such power.

State Statute 5 provides that such deed, covenant or contract, where the power has been created by a nontestamentary instrument of trust shall be filed with the fiduciary or fiduciaries of such trust.

Trust 2 does not expressly prohibit a release of, a covenant, or contract not to exercise Grandchild's general power of appointment. The Partial Release was executed on Date 4, in Year 7, after the enactment of State Statutes 1-5. In a case in which State Statutes 1-5 were in effect, State court held that no particular form of release is required and so long as the intention to release is adequately expressed and the instrument is properly executed and delivered, it is valid. Citation 1.

At age 19, Grandchild executed the Partial Release. While Grandchild was not of majority age of 21 years old in State, Trust 2 expressly provides that Grandchild could

exercise her power of appointment once she “shall have reached the age of eighteen (18) years.” Further, Grandchild has consistently ratified the Partial Release by her subsequent conduct. A former infant’s failure to disaffirm or ratify a release of a power of appointment within a reasonable time after reaching majority is generally considered to constitute a ratification of the release. See *Restatement Property 3d* § 8.2(b).

Based on the facts submitted and representation made, we conclude that Grandchild’s power to appoint Trust 2 assets, which does not extend to the power to appoint such assets to herself, her creditors, her estate, or the creditors of her estate is not a general power of appointment.

ISSUE 2

Section 2601 imposes a tax on each generation-skipping transfer (GST). Under § 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the generation-skipping transfer tax shall not apply to any generation-skipping transfer under a trust that was irrevocable on September 25, 1985, but only to the extent that the transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added). Section 26.2601-1(b)(1)(ii)(A) provides that any trust in existence on September 25, 1985, will be considered an irrevocable trust except as provided in § 26.2601-1(b)(1)(ii)(B) or (C) (relating to property includible in the grantor’s gross estate under §§ 2038 and 2042).

Section 26.2601-1(b)(1)(v)(A) provides that where any portion of a trust remains in the trust after the post-September 25, 1985 release, exercise, or lapse of a power of appointment over that portion of the trust, and the release, exercise or lapse is treated to any extent as a taxable transfer under chapter 11 or chapter 12, the value of the entire portion of the trust subject to the power that was released, exercised, or lapsed is treated as an addition to the trust. The creator of the power will be considered the transferor of the addition except to the extent that the release, exercise, or lapse of the power is treated as a taxable transfer under chapter 11 or chapter 12. In the latter case, the transferor for purposes of chapter 11 or chapter 12 is the transferor for purposes of chapter 13.

Section 26.2601-1(b)(1)(v)(B) provides that the release, exercise, or lapse of a power of appointment (other than a general power of appointment as defined in § 2041(b)) is not treated as an addition to a trust if (1) the power of appointment was created in an irrevocable trust that is not subject to chapter 13 because the trust was irrevocable on September 25, 1985, and (2) in the case of an exercise, the power of appointment is not exercised in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any life in being at the date of creation of the trust plus a period of 21 years. If a power is exercised by

creating another power, it will be deemed to be exercised to whatever extent the second power may be exercised.

Trust 2 was irrevocable on or before September 25, 1985 and it is represented that there have been no additions (constructive or otherwise) to Trust 2 after September 25, 1985. Accordingly, Trust 2 is exempt from the generation-skipping transfer tax.

The power of appointment granted to Grandchild under Trust 2 was created in an irrevocable trust that is not subject to chapter 13 because it was irrevocable on September 25, 1985. Grandchild was granted a general power of appointment in Year 5. Grandchild partially released the power to appoint the assets of Trust 2 to herself, her creditors, her estate, or the creditors of her estate on Date 4, in Year 7, a date prior to September 25, 1985. The partial release of Grandchild's power of appointment was prior to September 25, 1985 and was not treated as a taxable transfer under chapter 11 or chapter 12. Subsequent to Date 4, Grandchild retained only a limited power of appointment in Trust 2.

Grandchild proposes to exercise her limited power of appointment over Trust 2 by appointing the property to her issue living at the time of her death per stirpes. The proposed exercise of Grandchild's limited power of appointment will not postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of Trust 2, extending beyond any life in being at the date of creation of the trust plus a period of 21 years. Therefore, the exercise of Grandchild's limited power of appointment will not constitute a constructive addition to Trust 2. Accordingly, we conclude that Grandchild's exercise of her limited power of appointment in favor of her issue per stirpes will not be deemed a constructive addition to Trust 2 for generation-skipping transfer tax purposes.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes